

May 29, 2014

Dear TC:

Re: Vineyard Square Certificate of Design Approval expiration issues.

Vineyard Square (VS) on 21st Street was required to obtain demolition permits from the Board of Architectural Review to demolish certain buildings along 21st Street. VS was also required to obtain design approval for the new mixed use building that would replace the demolished buildings. After appeals the applicant received approval for 12 Certificates of Design Approval (CDA) for the demolition of 11 buildings and one CDA for the design of the new building. Each building to be torn down required a separate CDA.

The new building is permitted by right and needs no further review by the Planning Commission or the Town Council. The next step in the process is for the applicant to submit a site plan for administrative approval and once approved, obtain a zoning permit to commence construction.

There is one limitation that they will have to address as they proceed. Each of the CDAs has a time limit of one year that is imposed by ordinance (Chapter 54 Section 54-78 (f) of the Town Code). The CDAs will expire and a new CDA will have to be applied for if the applicant does not commence construction on each CDA prior to its expiration date. There are three deadlines or expiration dates.

1. The first deadline is November 14, 2014. This deadline is for the demolition of all the buildings along 21st Street, O Street and the other buildings in back of 21st Street with the exception of the two brick buildings at the southern end of the project. The applicant must begin demolition on all 10 buildings prior to November 14, 2014 or he faces having these CDAs expire. There are no conditions imposed on these demolitions. The applicant can commence demolition at any time prior to November 14, 2014 but demolition must begin prior to November 14, 2014.
2. The second deadline is December 16, 2014. This is the deadline for commencement of demolition for the 2 brick buildings. There is, however, a condition attached to this CDA. The 2 brick buildings cannot be demolished until a site plan has been approved and a zoning permit issued for the new building. This was a condition of approval imposed by Town Council as a result of the appeal hearing (see attached transcript of the December 17, 2014 TC meeting).
3. The final deadline is January 14, 2015. This deadline requires an approved site plan and a zoning permit for the new building along with the commencement of construction on the new building. However, the effective deadline for the approved site plan and zoning permit is actually December 16, 2014 since they have to commence demolition of the brick buildings by that date and they can't do that unless the new building has an approved site plan and zoning permit.

Effectively the applicant has 6 months to receive site plan approval, a zoning permit, and actually commence construction. Because of these deadlines, the applicant is concerned that there might not be enough time to go through the site planning process and pull a zoning permit before the time limit on

the approved Certificate of Design Approval expires. Historically, smaller site plan submittals such as the Bank of Clark County and Blue Ridge Vets take from 4 to 6 months to review and approve; larger projects like Gateway and Loudoun Valley Shopping Center can take from 1 to 3 years to review, approve, and actually start construction.

Staff has reviewed the CDAs and the timelines and it appears that the applicant has three choices in moving forward.

1. Meet the deadlines. The CDAs were approved last year and the applicant had 12 months to submit a site plan and for whatever reason they are now down to 6 months. A concerted effort to obtain site plan approval could potentially be achieved over the next 6 months. However, there is some risk and there is no cushion if there are unexpected delays.
2. Apply for new CDAs if and when the existing ones expire. Given this scenario there is the possibility that approvals will not be forthcoming and the project would have to stop.
3. Request a text amendment to the Town Code that would allow for the granting of one administrative extension of 12 months by clearly demonstrating that they are diligently pursuing the development. This does not require Planning Commission review. Appropriate standards and benchmarks could be built into the ordinance (e.g. requiring that the site plan be submitted no later than 6 months from the date of the extension or else the extension is void). It is not unusual for a development to start, stall, and start again as it moves through the process. All of our recent major developments have gone through that cycle which results in uncertainty and the need for extended timelines in some cases. Requiring a project to start construction within one year of CDA approval is not always realistic without the ability to grant an extension if the project runs into difficulty meeting the imposed deadlines. The extension does not vest the project it simply extends the deadline. The Town of Leesburg provides for unlimited 6 month extensions, Herndon has no expiration time, Loudoun County has a 5 year commencement requirement.

Options 1 and 2 present some risk to the Town as they could potentially result in 9 of the 11 buildings being demolished to meet the first deadline and then being prevented from proceeding to construction because the deadline for the demolition of the brick buildings could not be met.

If you would like to proceed with a text amendment we can move it forward immediately and have it available for the last meeting in June, our deadline for the required advertising is Monday the 2nd of June.